

Maricopa County Environmental Services Department Policy and Procedure	DPPN: 10-00-06 ES* Page 1 of 11	Last Review 04/00
	APPROVED:	
Initiating Department: Business Services Division		Issue Date 04/28/00
Subject: Air Quality Violation Reporting and Enforcement Policy and Procedure		Next Review 04/02

I. PURPOSE

The purpose of this policy is to provide a consistent reasonable process for documenting potential air quality violations, notifying alleged violators, and initiating enforcement action to ensure that violations are addressed in a timely and appropriate manner.

II. REFERENCE

Arizona Revised Statutes, Title 41 and 49, and Maricopa County Air Pollution Control Regulations.

III. APPLICABILITY

This policy applies to all violations for which the Control Officer has jurisdiction. All personnel within the Department involved in Air Quality Programs are required to comply with this policy.

IV. ENFORCEMENT PROCEDURE

A. INSPECTION/INVESTIGATION

1. The substantive requirements (paragraphs A through K, Inclusive) of Arizona Revised Statutes (A.R.S) § 41-1009 (Laws 1998, Chapter 57, Section 22), are adopted by reference and shall be implemented.
2. If consent to entry of a regulated premises for the purpose of conducting an inspection is denied while attempting to follow the procedures specified in A.R.S. § 41-1009 (paragraphs A through C), Air Enforcement Section personnel shall prepare all documents required pursuant to A.R.S. § 49-488 to obtain a Special Inspection Warrant.

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3. When a potential violation is discovered while conducting an inspection, investigating a complaint, or by other means, personnel shall describe details and all relevant information as soon as possible using the appropriate format, such as, Compliance Inspection Report, Earth Moving Site Inspection, or other designated report or form. Written reports shall always describe the essential elements of a violation including where, when and how events occurred that resulted in a violation, and the name, affiliation, title, and statements of people interviewed. Reports shall refer to and include other evidence such as photographs and analytical tests required by rule that support the failure to comply with a requirement.
4. Notification of a violation shall be in writing and provided to an owner, operator, or responsible official. Methods of written notification include Compliance Status Letter, Inspection Form, Notice of Violation, Notice to Appear and Complaint ("Citation"). Citations will only be issued upon approval by the Air Enforcement Section for violations other than those listed in Subsection IV.A.6. Refer to Subsection IV.B.3 for responsibilities and procedures associated with issuing Citations.
5. A follow up investigation shall be conducted if a violation has not already been corrected at the time the written notice of violation is issued. The follow up findings shall be documented in writing. If it is discovered that the violation has not been brought into compliance the investigator shall issue a written notice of the violation in accordance with Subsection IV.A.4. Personnel shall provide a copy of the written violation notification, inspector's supplemental report, and supporting evidence to the Air Enforcement Section within three (3) business days after discovery of the violation.
6. Violations described in this Subsection shall be referred to the County Attorney's Office. Cases referred to the County Attorney's Office shall

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comply with Subsection IV.A.7. Personnel shall provide a copy of the written violation notification, inspector's supplemental report, and supporting evidence to the Air Enforcement Section within three (3) business days after discovering any of the violations listed in this Subsection.

Cases referred to the Air Enforcement Section pursuant to Subsection IV.A.6 shall be reviewed within three (3) business days after receipt and forwarded to the County Attorney's Office or returned to the Air Compliance Section with a written request for additional information.

a. REGULATION II, RULE 200 - PERMIT REQUIREMENTS

Knowingly or willfully failing to obtain a permit under Sections 301 through 305.

b. REGULATION III, RULE 310, FUGITIVE DUST SOURCES, SECTION 302 - STABILIZATION REQUIREMENTS FOR FUGITIVE DUST SOURCES and SECTION 308 - WORK PRACTICES

i. Subsection 302.1: Stabilization Requirements for unpaved parking lots; opacity exceeds 20% and both the silt loading and silt content limitations are exceeded.

ii. Subsections 302.2, 308.4, and 308.5: Stabilization Requirements for unpaved haul/access roads; a site's Dust Control Plan specifies the number of vehicles traveling on unpaved haul/access roads per day and more than 20 vehicle trips per day are observed passing a particular point or vehicle speeds exceeding 15 mph are documented.

iii. Subsection 302.3: Stabilization Requirements for disturbed surface areas; a disturbed area on which no activity is occurring fails all applicable standards specified under Subsection 302.3.

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- iv. Subsections 308.1 and 308.2, Work Practices for hauling; the freeboard is measured and determined to be less than three inches, or a load of bulk material is leaving a site with no cover over the cargo space, or spillage or loss of bulk material occurs from holes or other openings in the cargo space, or motor vehicles traversing a paved public roadway fail to pass over a trackout control device.
- v. Subsection 308.3a., Work Practices to limit trackout; motor vehicles are observed exiting a work site with a disturbed surface area of five acres or larger onto a paved roadway without passing over a trackout control device.
- vi. Subsection 308.3b, Work practices to limit trackout; deposits are observed on a paved public roadway originating from a work site exit extending a cumulative distance of 50 feet or more along the roadway. Additionally, particulate matter is observed being spilled or deposited onto the roadway at least 50 feet away from the work site exit from the cargo compartment, tires, or other exterior surfaces of a vehicle exiting the work site.
- vii. Subsection 308.7, Work Practices for earthmoving operations on disturbed surface areas one acre or larger; an acre or more is disturbed and the site's Dust Control Plan designates water as the control measure to be used and no water is being applied while an earthmoving operation is being conducted.
- viii. Subsection 308.8, Work practices for weed abatement; discing or blading is being conducted for weed abatement and no water is being applied.

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c. REGULATION III, RULE 310.01 - FUGITIVE DUST FROM OPEN AREAS, VACANT LOTS, UNPAVED PARKING LOTS, AND UNPAVED ROADWAYS, SECTION 303 - UNPAVED PARKING LOTS and SECTION 305 - COMMERCIAL FEEDLOTS AND LIVESTOCK AREAS

i. Section 303, Unpaved Parking Lots; more than 100 vehicles are present and either (1) the opacity exceeds the 20% standard and a silt loading of more than 0.33 oz/ft² is documented, or (2) a silt content of more than 8% is documented.

ii. Section 305, Commercial Feedlots and Livestock Areas; fugitive dust plume emanating from such an area exceeds the 20% opacity standard and there is no evidence of the application of dust suppressants (including water) or gravel, and no trees are present within 100 feet of animal pens.

7. Violations referred to the County Attorney's Office shall be in narrative report form. The report shall include the essential elements of the violation, the date and location of the violation, the Justice Court precinct in which the violation occurred, the names, addresses, and telephone numbers of both the violator and potential witnesses, and any statements made by the violator and witnesses. The report shall also include all other evidence such as photographs, analytical tests required by rule, and forms that support the failure to comply. The report shall include an attachment, from the Enforcement Officer, recommending what action should be taken and what monetary penalty should be imposed.

8. Nothing in this policy requires written notification prior to filing a Notice to Appear and Complaint in Justice Court or referring the matter to the County Attorney.

B. ENFORCEMENT OPTIONS

One or more of the following enforcement options listed in Subsections IV.B.1 through IV.B.3 may be initiated

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for any violation under the Control Officer's jurisdiction.

It is the responsibility of Air Enforcement Section personnel to review Department records and determine, based on the evidence, the appropriate enforcement action. Except for violations described in Subsection IV.A.6, factors considered to determine appropriate enforcement action shall include, but are not limited to, the following:

- Repeat violations after receiving written notification from the Department.
- Major deviation from an air quality standard or requirement, such as, a Title V source submitting a Non-Title V permit application, making a facility change which would not qualify for a minor permit revision, removing regulated asbestos containing material without first filing required notification, or abrasive blasting without using a required control measure.
- Evidence of willfully or knowingly violating air quality control laws and regulations.
- Actual harm or a significant potential to harm public health or the environment.

1. ORDER OF ABATEMENT

Pursuant to A.R.S. § 49-511 an Order of Abatement may be issued for any violation. An Order of Abatement is prepared by Air Enforcement Section personnel and must be approved and signed by the Air Pollution Control Officer or his/her designee. Within five (5) business days after the decision is made to use this option, the Air Enforcement Section shall present an Order of Abatement to the Air Pollution Control Officer. Copies of the Order of Abatement will be sent to the Air Division Manager, Compliance Section Manager, Inspector, Enforcement Officer, EPA, ADEQ, Office

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Of the County Attorney, and members of the Air Pollution Control Hearing Board.

An inspector or enforcement officer shall conduct follow-up investigations to determine whether there has been compliance or non-compliance with an Order of Abatement. Inspectors shall send copies of follow-up reports to the designated Enforcement Officer.

When an Order of Abatement recipient requests a hearing before the Air Pollution Control Hearing Board, Air Enforcement Section personnel shall notify all appropriate Department personnel concerning required attendance at the hearing. Notice of the hearing shall also be sent to the office of the County Attorney.

2. REFERRAL TO COUNTY ATTORNEY'S OFFICE

See Addenda A and B.

3. NOTICE TO APPEAR AND COMPLAINT

Inspectors and enforcement officers issuing a Citation for a violation other than those listed in Subsection IV.A.6 are responsible for the following:

- Determine whether sufficient evidence is available to prove beyond a reasonable doubt in Justice Court that a violation occurred,
- Explain to the defendant the nature of the violation and why a Citation will be issued,
- Complete all portions of the Citation,
- Obtain the defendant's signature and leave the pink copy of the Citation with the defendant,
- Explain to the defendant the requirement to appear in Justice Court on the arraignment date, and
- Within two (2) working days after obtaining the defendant's signature, file the white and blue

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copies of the Citation in the designated Justice Court. Submit the yellow copy of the Citation and all reports, photographs, and analytical tests required by rule supporting the violation to the Air Enforcement Section Manager within three (3) working days after filing the Citation in Justice Court.

Air Enforcement Section personnel are responsible for representing the Department, and coordinating with the County Attorney's Office in all Justice Court proceedings, including arraignments, pre-trials, and meetings with defendants. Air Enforcement Section personnel shall provide information concerning court case status and disposition at the request of Department personnel.

- C. Violations discovered at Major Sources and Synthetic Minor Sources shall be entered and tracked in the AIRS database by Air Quality Division personnel. These violations shall be resolved by referring to the most current EPA document titled: "The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)" for guidance.
- D. Air Enforcement Section personnel shall utilize the "Maricopa County Air Quality Violation Penalty Policy" to calculate appropriate penalties for both Criminal and Civil Complaints, except Asbestos NESHAP violations.
- E. Air Enforcement Section personnel shall assess Asbestos NESHAP violations by following the criteria set forth in the most current EPA document titled: "Asbestos Demolition and Renovation Civil Penalty Policy". Penalties shall be calculated by using the "Arizona Asbestos NESHAP Civil Penalty Policy Computation Worksheet" developed by ADEQ and approved by EPA.
- F. When applicable, the "EPA Supplemental Environmental Projects Policy", effective May 1, 1998, may be utilized in developing settlement agreements to further Department goals to protect and enhance public health and the environment.

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ADDENDA:

ADDENDUM A

ADDENDUM B

DISTRIBUTION:

Environmental Services Department
Business Services Division
Air Quality Services Division
Water and Waste Management Division
Environmental Health Services Division
Community Services Division

ADDENDUM ACOUNTY ATTORNEY OPTIONS

Upon submittal to the County Attorney's Office, the County Attorney shall review the referral to determine if there is sufficient evidence to support a complaint. If so, the County Attorney may proceed as follows:

1. Settlement Conference with Consent Agreement

The County Attorney's Office may request a settlement conference with the violator and an Enforcement Officer prior to filing a complaint. If an agreement is reached, the parties will enter into a written agreement which may include monetary penalties, reimbursement costs for investigation and prosecution, violator education, and other sanctions.

2. Filing of Criminal Complaint

The County Attorney's Office may file a criminal complaint if there is a reasonable likelihood of conviction. The matter may proceed to trial or the parties may enter into a plea agreement which may include monetary penalties, reimbursement costs for investigation and prosecution, violator education, and other sanctions.

3. Filing of Civil Complaint

The County Attorney's Office may file a civil complaint seeking monetary penalties and injunctive relief.

After reviewing the submittal, if the County Attorney determines that there is insufficient evidence to support a complaint, the County Attorney may send it back to the Environmental Services Department for additional information or may turn it down.

Addendum B

Dust Control Case Flow

